



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

no log number

B-178192

October 29, 1973

Pattit, Evers & Martin
The Transamerica Building
600 Montgomery Street
San Francisco, California 94111

Attention: Ronald A. Cohan, Esq.

Gentlemen:

We refer to your letter dated August 7, 1973, on behalf of Granger Associates (Granger), requesting reconsideration of our decision B-178192, July 27, 1973, upholding the protest of Technology for Communications International (TCI) against the award of a contract under invitation for bids (IFB) No. N00039-73-B-0254, Step II, issued by the Naval Electronics Systems Command (NESEC).

Request for Proposals (RFP) N00039-73-R-0254(Q) Step I, calling for unpriced technical proposals for high take-off angle antennas and ancillary items, was issued on December 1, 1972. Proposals were received from TCI and from Granger Associates. After holding discussions with both offerors, the Navy determined that the proposals submitted by both firms as supplemented were acceptable. On February 23, 1973, the second step IFB was issued, calling for prices on the proposals deemed acceptable. TCI bid \$173,297.90, while Granger bid \$156,899.85, and after evaluating transportation costs the Navy determined that Granger's bid was the lowest.

Section F of both the Step I and Step II solicitations contained the following provision:

"3.4.5 - Tower climbing equipment. A ladder with safety climbing device shall be provided for climbing the full length of the tower.

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"3.4.5.2 - Ladder. The ladder shall be made of either steel or aluminum conforming to either the specification listed under the material section of the latest issue of the American Institute of Steel Construction (AISC) specification for the Design, Fabrication and Erection of Structural Steel for Buildings or the specification listed under the material section of the American Society of Civil Engineers (ASCE) Structural Division Proceedings Paper No. 3041 and 3342, 'Suggested Specifications for Structures of Aluminum Alloy 6061-T6, 6062-T6, 6063-T5, and 6063-T6.'

"Inside dimensions between stringers shall be 18 inches unless otherwise specified. Center to center spacing of rungs shall be 11 inches. Ladders shall be shop assembled in approximately 30-foot sections. Angle brackets for bolting ladders to the tower shall be punched for bolts and provided for connection to the tower bracing members of the towers.

"The rungs shall be 3/4 inch in diameter minimum. Vertical stringers shall be 2-1/2 x 3/8 inch thick minimum. Angle brackets shall be 3/8 inch thick minimum spaced not more than 10 feet apart.

"Steel ladders shall be galvanized after fabrication. Splice plates for bolted connections shall be provided at all ends for connecting individual sections."

TCI proposed to furnish a separate ladder, while Granger proposed a ladder that would be an integral part of the antenna structure.

TCI argued that the Granger proposal deviated from the specification requirements, which TCI insisted required a separate, shop-assembled ladder rather than just the addition of rungs to the tower structure, and was therefore nonresponsive. Alternatively, TCI argued that the Step I specifications should have been revised by an amendment to the RFP so as to give TCI an opportunity to submit a proposal on an equal basis.

Briefly, we held in our initial decision that although the provisions of the RFP did not state that a separate ladder was required for the antenna, the specification sections dealing with the ladder reasonably appeared to indicate such a requirement against which proposals were to be evaluated. We concluded that it would be unfair to TCI to allow Granger to propose a nonseparate ladder when TCI might not have offered a similar proposal because of its reasonable interpretation of the specifications. We held that the Step II invitation should be canceled and the Step I specifications should be amended to clearly reflect the acceptability of a tower climbing device which is an integral part of the tower in order to give offerors an opportunity to submit proposals on an equal basis.

In your letter of August 7, 1973, you assert:

"I. That the decision represents a major departure from prior, published Comptroller General decisions addressing the principal issues raised by the TCI protest.

"II. That, as a matter of fairness, the bid protest of TCI should have been denied."

You argue that our decision negates the desired flexibility of two-step procurement because we in effect decided that the separate ladder requirement was a basic requirement of the specifications. In this regard you state:

"The Comptroller General now proposes to utilize 'criteria' in determining whether a requirement is essential. Instead of employing the traditional and accepted definition of 'essential' requirements, * * * the Comptroller General in effect has expanded the definition to include otherwise non-essential requirements, whenever the criteria (specifications) for such requirements are expressed in great detail by the procuring agency."

We recognize that the step one phase of a two-step procurement is a flexible process during which proposers are frequently encouraged, as here, to submit alternative technical approaches. This flexibility is inherent in the general rule that such technical approaches must comply with the basic requirements of the specifications but need not

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strictly comply with the nonessential details of specification provisions. 46 Comp. Gen. 34 (1966); 50 Comp. Gen. 337 (1970); 51 Comp. Gen. 85 (1972). On the other hand, we have also recognized that there is a limit to the extent to which a competition may be permitted to deviate from the stated specifications. If, for example, the specifications call for air conditioned vans with rotary compressors, a proposal offering a piston compressor could not be accepted without a change in the specifications. B-155433, June 17, 1965. Similarly, a change in specified friction tolerances for an altimeter would constitute a major specification change and therefore would require a written change to the specifications. B-157827, February 7, 1966. The underlying principle in these cases is that the proposed change in specification requirements is of a substantial nature and all proposers should be given the opportunity to submit a proposal on the changed requirements in order to permit competition on an equal basis. In the instant case, the record indicated that the Navy's failure to inform TCI of the acceptability of proposing an integral ladder design prejudiced TCI to the point where its bid under step two could not be evaluated on an equal basis with bids based on an integral ladder design.

Thus, our decision turned on whether the essential fairness of the procurement would be preserved by acceptance of the Granger proposal for an integral ladder without proper notification to TCI. In making this determination, we necessarily considered not only whether, from a technical point of view, the ladder requirement was actually a "basic" one with respect to the procurement of the overall antenna system, but also whether the solicitation reasonably indicated to offerors that they were free to deviate from this particular requirement. While it is primarily for the procuring agency to make the technical determination as to whether or not a stated requirement is an "essential" one in view of its overall technical needs, it is clearly within the competence of our Office to consider what meanings may be reasonably attributed to solicitation provisions. In this case, after complete and careful consideration of well-written submissions from both Granger and TCI and of the Navy's original and supplemental reports, we concluded that TCI's interpretation of the specifications was entirely reasonable since the mandatory language, the specificity of detail, and the general thrust of the provision together reflected the type of specification requirement that could not be waived. Therefore, we concluded that it would be prejudicial to TCI to allow another offeror to deviate from that specification requirement and possibly obtain a financial advantage thereby.

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In our view, two-step procurement is a flexible process, but is also a competitive one, and the degree of flexibility permitted should not be allowed to render the competitive aspect of the process meaningless. Although you assert that upholding TCI's protest is unfair to Granger, we are convinced by the record that it is only by upholding the protest that fairness and equal competition will be preserved in this procurement. Accordingly, our prior decision in this matter is affirmed.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States